

# STATE OF VERMONT BOARD OF MEDICAL PRACTICE

In re: T. Desmond Brown, M.D.

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Docket No. MPN ~~159-1005~~  
135-0905

## STIPULATION AND CONSENT ORDER

NOW COME the State of Vermont, by and through William H. Sorrell, Attorney General, and James S. Arisman, Assistant Attorney General, and T. Desmond Brown, M.D., Respondent in this matter, and agree and stipulate as follows:

1. The Vermont Board of Medical Practice (hereinafter "the Board") possesses authority to investigate matters involving medical practice, pursuant to 26 V.S.A. § 1353. The Board's jurisdiction in this matter is pursuant to 26 V.S.A. §§ 1353-1356, 1361, & 1398.

2. Respondent was issued a medical license by the Vermont Board of Medical Practice on August 1, 2001 and holds Vermont license number 042-0010282. Respondent, an orthopaedic surgeon, practices and teaches in Boston. Respondent holds privileges at Boston Medical Center. Respondent's practice in the State of Vermont is occasional.

### I. Background.

3. The above-captioned matter was opened by the Vermont Board of Medical Practice on or about September 19, 2005, following receipt of information indicating that Respondent had entered into an Interim Practice Agreement for Practice Restrictions with the Massachusetts Board of Registration in Medicine, on or about August 25, 2005. Respondent subsequently entered into a final Consent Order with the Massachusetts Board, effective November 16, 2005 (Adjudicatory Case No.

2005-048; Complaint No 05-412; Statement of Allegations, Consent Order, and Probation Agreement entered in this matter by the Massachusetts Board of Registration in Medicine are attached herewith as **Exhibit 1.)**

4. The Massachusetts Board alleged and Respondent agreed that on June 22, 2005 he was the attending orthopaedic surgeon assigned to the trauma operating room at Boston Medical Center (BMC). Respondent, two chief residents, and a PGY3 were to perform procedures for fixation of upper extremity fractures for a patient who had been injured in an auto accident. Respondent was present for irrigation and debridement of the patient's right humerus and exploration of a right radial fracture. However, Respondent left the operating room to attend to a matter at another location. While Respondent was absent, the residents remained in the operating room and reduced the radial fracture and secured it with a plate and screws. The residents were unsupervised during this portion of the procedure.

5. Respondent had left his pager at home. When Respondent left the operating room during a key portion of the surgery, he could not be reached when members of the operating team tried to contact him. Respondent had not notified all members of the operating team that he was leaving the operating room or how long he would be gone.

6. Respondent left the operating room for the purpose of delivering a lecture at a nearby location. After he was located, Respondent returned to the operating room to perform and supervised the remainder of the surgery. Respondent has stated that no physical harm to the patient resulted from this incident. The patient has characterized Respondent as professional and compassionate in speaking with him regarding the incident.

7. Respondent later received a formal written reprimand from the chairman of the Boston Medical Center Department of Orthopaedic Surgery.

#### **A. Action Taken by Massachusetts Board of Registration in Medicine.**

8. The Massachusetts Board of Registration in Medicine found that Respondent's actions, as described above, constituted misconduct in the practice of medicine and that Respondent had engaged in conduct detrimental to public confidence in the medical profession. The Massachusetts Board suspended Respondent's license to practice medicine but permitted him to petition immediately for a stay of the period of suspension and probation by agreement with the Board. Thus, no actual suspension of Respondent's Massachusetts medical license ever occurred. Under his probation agreement with the Massachusetts Board Respondent must comply with certain restrictions and conditions during his surgical practice.

9. Respondent appears to have cooperated fully with the Massachusetts Board during its investigation and disposition of this matter.

#### **II. The Instant Agreement Between the Vermont Board and Respondent.**

10. Respondent expressly agrees with the facts set forth in Paragraphs 3 through 9, above. Respondent agrees here that he entered into the consent order with the Massachusetts Board of Registration in Medicine in 2005. Respondent has now voluntarily determined that he wishes to provide certain assurances and to enter into terms and conditions of licensure with the Vermont Board of Medical Practice so as to resolve this matter.

11. Respondent has cooperated fully with the Vermont Board of Medical Practice in its investigation. He and his attorney have communicated responsively with staff of the Vermont Board and the Office of the Vermont Attorney General and provided all information requested of them. Respondent wishes to expeditiously resolve this matter by entering into this Stipulation and Consent

Order with the Vermont Board, to achieve a disposition acceptable to the parties while minimizing uncertainty and the costs to all concerned.

12. The parties to this Stipulation and Consent Order agree here that appropriate resolution of this matter shall consist of imposition of the terms and conditions set forth herein on Respondent's Vermont license to practice medicine. Pursuant to this agreement, Respondent's Vermont medical license shall be designated as "conditioned", and Respondent shall comply fully and in good faith with the terms and conditions of licensure set forth in this agreement, until such time as he is relieved of the conditions herein by express written order of the Vermont Board of Medical Practice.

**A. Incorporation of Massachusetts Agreement.**

13. Respondent agrees that he shall continue to comply fully with all terms and conditions set forth in his 2005 Consent Order and Probation Agreement of the Massachusetts Board of Registration in Medicine and that he shall do so until such time as he is relieved of all those terms and conditions in writing by the Massachusetts Board.

14. Respondent agrees that the instant agreement with the Vermont Board of Medical Practice, shall incorporate by reference all terms and conditions of his 2005 consent agreement and probation agreement with the Massachusetts Board of Registration in Medicine. Respondent acknowledges and agrees that principal oversight and monitoring of his medical practice and compliance status shall be by the Massachusetts Board of Registration in Medicine.

**B. Agreement with the Vermont Board.**

15. Respondent expressly agrees that the instant agreement with the Vermont Board of

Medical Practice constitutes a separate agreement between himself and the Vermont Board, and is in addition to his existing consent agreement with the Massachusetts Board of Registration in Medicine.<sup>1</sup>

16. No specification of charges has been filed by the State in this matter. Respondent has not been the subject of prior disciplinary action by the Vermont Board of Medical Practice.

17. The parties to this Stipulation and Consent Order agree that appropriate disposition of this matter shall consist of the following:

A. Respondent's Vermont license to practice medicine shall be designated as "conditioned" for a period of at least 12 months from the effective date of the Vermont Board's Order approving this Agreement, and he shall comply fully and in good faith with all terms and conditions of licensure set forth herein, until such time as he has been relieved of all such conditions herein by written order of the Vermont Board of Medical Practice.

B. **Stayed Suspension:** Respondent agrees that a **stay**ed suspension of his Vermont license to practice medicine may and shall be entered by the Vermont Board of Medical Practice. Such suspension shall remain stayed, subject to full compliance by Respondent with the terms of this agreement. However, substantial or repeated failure by Respondent to comply with any of the terms and conditions herein may constitute unprofessional conduct and, if established by the State's evidence, shall result in actual suspension of Respondent's license to practice medicine in Vermont for a period of at least one year and such other disciplinary action as the Board may deem appropriate under the circumstances.

C. Respondent shall be publicly **REPRIMANDED** by the Vermont Board of Medical Practice for the conduct set forth above, in addition to the imposition of the terms and conditions set forth herein.

#### C. Surgical Monitoring in Vermont.

18. Respondent agrees that all surgeries that he performs at any medical facility or site in Vermont shall be monitored by another attending physician who shall be approved in writing in

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1. Should any terms of this agreement with the Vermont Board be in conflict with terms of Respondent's agreement in Massachusetts, the provision most protective of the public health, safety, and welfare in Vermont shall prevail.

advance by the Board or the assigned Board investigative committee. Respondent shall petition the Board in writing for such approval. The monitor(s) approved for this purpose shall be responsible for verifying in writing Respondent's presence during surgeries performed in Vermont and, where applicable, monitoring and verifying in writing Respondent's supervision of any and all resident fellows who assist in Respondent's surgeries.

19. Respondent agrees that he shall confirm that the "monitor" is present or immediately available before Respondent or any residents or fellows under his supervision begin a surgical procedure.<sup>2</sup> Respondent agrees not to leave the surgical floor during any surgical procedures in which he is involved or for which he is responsible.

20. Respondent agrees to provide his Vermont monitor(s) with an advance copy of his schedule for surgeries to be performed in the State of Vermont and to promptly inform the monitor(s) of any changes in this schedule.

#### D. Call Duties and Surgeries.

21. Respondent expressly agrees that all his "call" duties and surgeries in the State of Vermont will comply with the following: (a) Respondent shall remain in the operating room throughout all surgeries; (b) Respondent agrees to contact the second "on call" orthopedic surgeon (or chief of surgery) before starting any operation, with the exception of *bona fide* emergency circumstances in which delay would create harm or risk of harm to the patient; (c) Respondent agrees to report to such other surgeon the diagnosis and anticipated operative procedure.

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2. For days or times when the Board approved monitor will not be present, the approved monitor will designate in advance a senior attending physician to act temporarily as Respondent's secondary monitor. Should the Board approved monitor become generally unable or unavailable to carry out the responsibilities required by this agreement, Respondent shall promptly petition the Board or the assigned investigative committee for approval of another practitioner to act as monitor.

#### **E. Disclosure.**

22. While this agreement remains in effect, Respondent shall (a) provide a complete copy of this agreement to any employer, medical site, institution, clinic, or hospital where he may apply for privileges or work as a licensed practitioner; and (b) provide a complete copy of this agreement to any agency or entity that licenses, certifies, or credentials physicians, should he apply to same.

### **III. Other Matters.**

#### **A. Basis for Agreement.**

23. Respondent agrees with and admits the facts set forth above in paragraphs 3 through 9, above. Respondent further agrees that the provisions and conditions of his 2005 consent agreement with the Massachusetts Board of Registration in Medicine constitute grounds under 26 V.S.A. § 1354 for the Vermont Board of Medical Practice to condition Respondent's license to practice as a physician in this state, and to impose the conditions set forth herein on his Vermont license to practice medicine. Respondent agrees that the Board of Medical Practice may adopt and enter as its findings and/or conclusions Paragraphs 3 through 9 and this paragraph as the basis for this agreement.

#### **B. Administrative Closure.**

24. In exchange for Respondent's agreement here, the Vermont Board of Medical Practice upon approval of this Stipulation and Consent Order will administratively close all matters involving Respondent that are currently pending before the Board and take no further action on them, absent non-compliance with the terms and conditions of this document by Respondent or disclosure of new, material information warranting the reopening of investigation.

25. The Board of Medical Practice is unaware at this time of any other undocketed complaints, allegations, or matters involving Respondent that might be brought to the Board's attention. Respondent, however, acknowledges that the Vermont Board of Medical Practice must

investigate in the event that new matters or evidence come to the attention of the Board, and, if warranted, could take further action pursuant to law. 26 V.S.A. §§ 1355, 1361. As of the effective date of this Stipulation and Consent Order neither the Board of Medical Practice nor the Office of the Attorney General contemplates any such action with regard to Respondent.

#### **C. General.**

26. Respondent voluntarily enters into this agreement and agrees that no promises or representations have been made to him other than the terms and conditions expressly set forth herein. Respondent agrees that his execution of this Stipulation and Consent Order is and shall be a final act, not subject to reconsideration, judicial review, or appeal.

27. Respondent agrees that he has read and carefully considered all terms and conditions herein and agrees to accept and be bound by these until he has been expressly relieved of these conditions, in writing, by the Vermont Board of Medical Practice.

28. Respondent's license to practice medicine in the State of Vermont shall be conditioned for a minimum of 12 months, following entry of the Board's Order approving the terms of this agreement. During the period that Respondent's license is conditioned he shall comply fully with all the requirements set forth herein. Respondent's Vermont license to practice medicine shall include the designation "Conditioned" until such time as all terms and conditions upon his medical license have been removed.

#### **D. Oversight.**

29. Respondent agrees he shall sign any and all releases or waivers of confidentiality that may be required by the Vermont Board of Medical Practice, its employees and agents, and/or the Office of the Vermont Attorney General to permit these to obtain information and records related to his compliance with the terms and conditions imposed by his agreements with the Massachusetts



and/or the Vermont boards. Respondent agrees he shall be responsible for taking reasonable steps to ensure that copies of all reporting and/or other information required by his agreement with the Massachusetts Board of Registration in Medicine are promptly and directly forwarded to the Vermont Board of Medical Practice for review and inclusion in his Vermont Board file. Respondent agrees that at any time, the Vermont Board of Medical Practice may review all information and records related to his compliance with his 2005 consent agreement with Massachusetts Board of Registration in Medicine.

#### **E. Modification or Relief.**

30. Respondent agrees that he shall not petition for modification of this agreement until (a) the Massachusetts Board of Registration in Medicine has terminated all terms of probation that were placed upon his Massachusetts medical license by his 2005 consent agreement with that Board; and (b) at least one year has passed following the effective date of the instant agreement with the Vermont Board. Respondent acknowledges and agrees that he shall bear the burden of proof and persuasion with regard to any such petition to the Vermont Board and agrees that the Vermont Board shall possess sole discretion to decide any such petition.

31. Upon his petition, any subsequent modification of Respondent's consent agreement with the Massachusetts Board of Registration in Medicine may be reviewed and considered by the Vermont Board of Medical Practice. Respondent agrees that the Vermont Board of Medical Practice in its sole discretion may decline to accept any such change or modification and may in its sole discretion retain or substitute such other reasonable terms as it may deem necessary to protect the public health, safety, and welfare of patients in the State of Vermont.

#### **F. Acknowledgement.**

32. Respondent acknowledges that he is knowingly and voluntarily agreeing to this

Stipulation and Consent Order. He acknowledges and agrees that he has had the opportunity to obtain advice of counsel regarding the matter presently before the Vermont Board and to obtain assistance of counsel in reviewing this Stipulation and Consent Order. Respondent is well satisfied as to any and all advice and representation that he has received.

33. Respondent understands and agrees that by executing this document he is waiving any right to be served with formal charges, to challenge the jurisdiction and continuing jurisdiction of the Board in this matter, to be presented with the evidence against him, to cross-examine any adverse witnesses, to offer evidence of his own in response to a specification of charges, or contest the conditions upon his Vermont medical license. 26 V.S.A. §§ 1356, 1357-1361; 3 V.S.A. §§ 809 & 814.

34. Respondent understands and agrees that the Vermont Board of Medical Practice must review and approve the proposed terms of this Stipulation and Consent Order. Respondent understands that if the Board does not approve this agreement, none of its terms and conditions shall be binding on him or constitute an admission or evidence as to any alleged unprofessional conduct. Respondent waives any and all claims by him that consideration of this agreement by the Board may have prejudiced any right to a fair and impartial hearing as to any charges of unprofessional conduct, in the event that the Board does not accept this agreement as written.

35. The parties agree that this Stipulation and Consent Order shall be a public document, shall be made part of Respondent's licensing file, and may be reported to other licensing authorities and/or entities including, but not limited to, the National Practitioner Data Bank and the Federation of State Medical Boards.

36. This Stipulation and Consent Order is subject to review and acceptance by the Vermont Board of Medical Practice and shall not become effective until presented to and approved

by the Board. If the Board rejects any part of this Stipulation and Consent Order, the entire agreement shall be considered void. However, should the terms and conditions of this agreement be deemed acceptable, the parties request that the Vermont Board of Medical Practice enter an order conditioning Respondent's Vermont license to practice medicine and providing that

**RESPONDENT T. DESMOND BROWN, M.D.  
SHALL BE PUBLICLY REPRIMANDED  
FOR THE CONDUCT SET FORTH ABOVE.**

37. Respondent agrees to be bound by all terms and conditions of this Stipulation and Consent Order. Respondent agrees that the Board of Medical Practice shall retain jurisdiction to enforce all terms and conditions of this Stipulation and Consent Order. Respondent expressly agrees that failure by him to comply with the terms of this Stipulation and Consent Order may subject him to further investigation and/or action by the Board.

Dated at Montpelier, Vermont, this 16<sup>th</sup> day of June, 2006.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

by:

James S. Arisman  
JAMES S. ARISMAN  
Assistant Attorney General

Dated at Boston, Massachusetts, this 12<sup>th</sup> day of June, 2006.

T. Desmond Brown  
T. DESMOND BROWN, M.D.  
Respondent

Dated at Cambridge, Massachusetts, this 14<sup>th</sup> day of June, 2006.

James J. Barry, Esq.  
JAMES J. BARRY, ESQ.  
Counsel for Respondent

FOREGOING, AS TO T. DESMOND BROWN, M.D.  
APPROVED AND ORDERED  
VERMONT BOARD OF MEDICAL PRACTICE

*Richard J. [unclear]* *Margaret Funk Markin*  
*Joseph W. [unclear]*  
*[unclear]*  
*[unclear]*  
*[unclear]*  
*[unclear]*

DATED: 7/5/06

ENTERED AND EFFECTIVE: July 5, 2006

BROWN 6/06, By James S. Arsenault, AAG-VT, Not Approved by BMP and Executed Above